IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2435 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANJIBHAI NATHAJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2435 of 1993

MR MC SHAH for Petitioner No. 1

MR K.L.PANDYA ASSTT GOVERNMENT PLEADER for Respondent No. 1-2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 16/10/2002

ORAL JUDGEMENT

#. By means of this petition, the petitioner has sought for quashing and setting aside the chargesheet

Annexure-A, the order - Annexure-B, Show Cause Notice Annexure-C and order awarding punishment of dismissal Annexure-D.

#. The petitioner was working as S.R.P. Constable and he has put in 30 years service as constable in State Reserve Police. The petitioner was chargesheeted on 28th September, 1988 by respondent No.2 stating that petitioner on 18-5-1986 at about 9.00 A.M. was ordered to go to Devagadh Baria for meeting communal riots by wireless message of D-Company in which the petitioner was included for Bandobast duty; that at about 9.05 p.m. Check roll was rang frequently for going on Bandobast duty at Devgadh Baria and the petitioner did not remain present and he tried to instigate the other constables not to go on Bandobast duty. The second charge was on 18-5-1996 inspite of repeated check roll, the petitioner knowing about Bandobast duty did not report on duty. On the contrary, he instigated the others for not going on such duty. The inquiry was held by the Commandant Group 5 SRP, Godhara. On 1-6-1986 the petitioner was transferred to Ukai, District Surat as Constable, Group No.10. The chargesheet was issued by the respondent No.2 to the petitioner when he was working at Ukai. The inquiry was completed and the show cause notice dated 8-6-1989 was issued calling upon the petitioner as to why the penalty of dismissal should not be awarded to the petitioner. The petitioner filed Suit being Civil Suit No.3451 / 1989 in City Civil Court at Ahmedabad for quashing the chargesheet given to him by respondent No.2 and for declaration that the inquiry conducted by the Commandant, Group No.5 was bad and also sought injunction against the defendants restraining from proceeding further with the inquiry. The City Civil Court while disposing the Suit directed the respondents to take into considerations the decisions of this Court reported in 1984 GLH pg.87, 23[1] GLR 352 and 26[2] GLR 1368 before imposing punishment under Section 18[1] of S.R.P.Act and Rule 3 [2] of the Bombay Police Punishment and Appeals Rules, 1956. The respondent No.3 passed the order dated 21-22nd August, 1992 dismissing the petitioner from service.

#. It is also asserted that the orders - Annexure-A, B, C and D are illegal without jurisdiction and without authority of law and are also null and void. The misconduct alleged against the petitioner was that on 18-5-1986, he remained absent and he instigated others not to go Bandobast duty. The petitioner was transferred from Godhara to Ukai on 1-6-86. The respondent No.2 issued chargesheet - Annexure-A and that respondent No.2

had no jurisdiction or authority to issue such chargesheet as the petitioner was serving at Ukai and not at Godhara. A show cause notice was issued by the respondent No.2 while the respondent No.3 has awarded the penalty. The respondent No.3 has no jurisdiction and authority to imposed such punishment. The commandant is equal to DSP and has no power to take disciplinary action against the petitioner and the powers to take disciplinary action are vested with DIG, Police, hence the entire action taken against the petitioner is illegal and without jurisdiction. It is also asserted that the extreme penalty of dismissal has been awarded which is not justifiable in the circumstances of the case as he has put in 30 years service. If the order of dismissal stands, he would lose all service benefits such as benefits of pension, gratuity etc and and such conduct is not so garve as to warrant extreme penalty of dismissal.

#. Heard learned counsel for the parties. The contention of the learned counsel for the petitioner is that the petitioner was chargesheeted for the misconduct that he was directed to attend the duty at Devgadh , District Godhara. At 9.00 p.m. at the time of check roll, the petitioner was called to go to place where he was to go but he was found absent. It is further charged that he has instigated the other constables not to go at the place where they were required to report for Bandobast duty. This chargesheet was issued by the respondent No.2 to the petitioner that when he was working at Ukai, District Surat. As such, the respondent No.2 has no jurisdiction or authority to issue the chargesheet to an employee who was not working within his jurisdiction. As the chargesheet is bad in law, hence all the proceedings initiated on the basis of the chargesheet are illegal and not sustainable in the eyes of the law.

#. I have considered this argument but I do not find any substance in this contention inasmuch as the petitioner was transferred from Godhara to Surat subsequently and the inquiry was being conducted by the respondent No.2 at Godhara, hence, he issued the chargesheet to be served on the petitioner at Ukai where he was working. As the proceedings of the inquiry had already been initiated against the petitioner, if the petitioner has been transferred to some other place issuance of chargesheet on the petitioner at difference place will not vitiate inquiry proceeding. Mere issuance of the chargesheet at different place where the delinquent has been transferred and is working, does not give rise to any jurisdictional error and more over, it is the consistent practice that

whenever the Presiding Officer has to conduct the domestic inquiry wherever the delinquent is working or placed under suspension, he is required to attend the inquiry proceedings at the place where the inquiry is being conducted. As such, the petitioner was transferred to Ukai from Godhara where chargesheet was served which came to be issued by the respondent from Godhara is not illegal, nor violative of any principle of natural justice. Moveover, learned counsel for the petitioner could not point out any provision of law to show that mere transfer of an Officer at a different place would vitiate the proceedings of the inquiry. Therefore, in above view of the matter, I do not find the contention of the learned counsel for the petitioner sustainable.

#. Learned counsel for the petitioner also contended that on the quantum of punishment awarded to the petitioner. It is contended that the extreme penalty of dismissal has been awarded which is not warranted in the facts and circumstances of the case inasmuch as the petitioner has put in 30 years of service and he would lose all service service benefits such as pensionary benefits and gratuity etc. In this connection learned counsel for the petitioner has relied on the Division Bench decision of this Court in case of R.M.PARMAR V. GUJARAT ELECTRICITY BOARD, BARODA reported in 23 [1] GLR 352 wherein, the Division Bench has enumerated nine principles for considering before awarding extreme penalty of removal or dismissal from the service. Following are the guidelines enumerated by this Court.

[1] In a disciplinary proceeding for an alleged fault of an employee punishment is imposed not in order to seek retribution or to give vent to feeling of wrath.

[2] The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out a warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.

[3] It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get red of them. It would be counter productive to do so for it would be futile to expect to recruit employees who are so

perfect that they would never commit any fault.

[4] In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.

[5] When penalties of different categories can be imposed in respect of the alleged fault one of which is service, the disciplinary authority per force is required to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeoaradising the interest of the employer the disciplinary authority cannot impose the maximum penalty of dismissal from service. he is bound to ask his inner voice and rational faculty why a lesser penalty cannot be imposed.

[6] It cannot be overlooked that by an large, it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the Court and avail of the costly and time consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to make recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.

[7] When the disciplinary proceedings end in favour of the employee the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would

constitute an unbearable burden. And hence the curtain drops every one is left with a bitter taste in the mouth. All because extreme penalty of dismissal or removal is imposed instead of a lighter one.

[8] Every harsh order of removal from service creates bitterness and arouses a feeling of antagonism in the collective mind of the workers and gives rise to a feeling of class conflict. It does more harm than good to the employer as also to the society.

[9] Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service.More particularly when he does not hold a sensitive post of trust [pilferage by a a cashier or by a store-keeper from the stores in his charge, for instance, may be viewed with seriousness]. A worker brought up and living in an atmosphere of poverty and want when faced with temptation, ought not to, but may, yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity. [And even tax evasion or possession of black money is not considered to be dishonorable by and large]. A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passes under the honourable name of kleptomania when committed by the rich."

#. I have considered this contention of the learned counsel carefully. It is not only a simple case where the petitioner remained himself absent from the duty but also he restrained other constables from attending the duty and he instigated the others not to attend the duty. Inspite of check roll, neither the petitioner attended the duty and he also instigated other Constables not to attend the duty. The Inquiry Officer found charges proved against the petitioner on the basis of sufficient material on record. Learned counsel for the petitioner could not point out any illegality or infirmity in proceedings of the departmental inquiry. The Police S.R.P. where the petitioner was working is considered to be a disciplined force. In this case, in the absence of good reason, we are not supposed to take lenient view where the department has not found any circumstance to take any such leniency in awarding extreme penalty. In

the present case, the conduct of the petitioner is not as simple as remaining absent from the duty due to some unavoidable circumstance but from the facts and circumstances of the case, it appears that the petitioner himself disobeying orders of higher officers deliberately and voluntarily had not joined the duty and he also instigated other constables not to join the duty. The action of the petitioner amounts to gross misconduct which requires the major punishment. The disciplinary authority has considered the facts and circumstances in which the major punishment has been awarded upon the petitioner. Unless this Court finds that the punishment awarded to any delinquent is so harsh and disappropriate shocking conscience of the High Court, then High Court or Tribunal can direct the disciplinary or appellate authority to reconsider the penalty imposed or to shorten litigation in exceptional and rare case impose appropriate punishment with cogent reasons in support thereof as considered by the Apex Court in case of B.C.CHATURVEDI V. UNION OF INDIA reported in AIR 1996 SC 484. Merely the petitioner has worked in police department for about 30 years, he remained absent and he also instigated other constables not to attend the duty, is not a case which shocks conscience of this Court warranting to mould or alter penalty imposed by the disciplinary authority as acts of the petitioner amounts to gross misconduct. In the facts and circumstances of this case, I am unable to agree with contention of the learned Counsel for the petitioner.

#. I have also gone through the record and it appears that the petitioner had an opportunity of appeal before appellate authority to avail under section 27 of the Bombay Police Act against the order of punishment but the petitioner has not preferred any such appeal before the appellate authority. Learned counsel for the petitioner requested this Court to give liberty to the petitioner to file appeal before the appellate authority. In the facts and circumstances of the case, I do not find any good reason warranting interference by this Court under Article 226 of the Constitution of India. Accordingly, this petition is dismissed. Rule discharged.

#. However, the petitioner would be liberty to move the appellate authority against punishment awarded, if such appeal is preferred, it is expected that the appellate authority will decide the same in accordance with law.

Date : 16-10-2002 [Kundan Singh, J.]

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